

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Writ Petition No.942 of 1992

Prof Malini Johri ...Petitioner
vs
State of Mah and ors... ..Respondents

Mr G.K.Masand for petitioner
Mr.R.J Mane AGP for respondent. nos.1 and 2
Mr.R Rodrigues for respondent no.3

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 28.1.2005

P.C:

1. The petitioner is a Master of Arts, Master of Philosophy and holds Bachelors Degree in Education and has been working as a full time teacher at Shri Chenai College of Commerce and Economics with effect from 20.6.1980. By this petition the petitioner is seeking to challenge the decision of the 2nd respondent not to allow grant with regard to increments to the petitioner for the period from 1988 to 1990.

2. The petitioner has obtained Post Graduate Degree in Arts with 57.5% marks in 1970 from Delhi University and M.Phil in February 1990 from the Bombay University.

3. It appears that increments of the petitioner were stopped by the college authority in June 1988 as she had not acquired the qualification of M.Phil. Subsequently pursuant to the Government Resolution dated 27.2.1989 a Placement Committee was constituted under clause 12 of the said Government Resolution and after due deliberations the Committee recommended to place the petitioner in the scale of Rs.3000-5000 which was a senior scale and also recommended to restore the increments which had been stopped from 1st June 1988 on the ground that the petitioner had not acquired the M.Phil degree at the relevant time. Consequent upon the recommendations of the Committee the petitioner was granted revised payscale and she was drawing basic pay of Rs.3400 as on 31st December 1991. However, thereafter pursuant to the directions given by the 2nd respondent petitioner's basic pay was reduced by two stages with effect from January 1992 and she was also asked to refund Rs.9,399 on account of alleged over payment for the period 1988-89 to 1991-92. The 2nd respondent took a view that while fixing petitioner's salary in revised pay scale the authorities through oversight ignored the aspect of stoppage of increment for 2 years and that the

petitioner was paid two extra increments which were not due to her.

4. We have heard Mr.Masand appearing for the petitioner,Mr. R.J.Mane, learned AGP for respondent nos.1 and 2 and Mr.Rodrigues for respondent no. 3 University of Bombay. We have also gone through the relevant government resolutions with the assistance of the learned counsel appearing for the parties.

5. It appears that the Government of Maharashtra vide Government Resolution No.USG 1175/104287 dated 4.10.1975 for the first time prescribed that a college teacher must have a post graduate qualification in Philosophy and if he does not acquire the same either prior to his employment or during his employment,his increments would be stopped and he may even be required to be replaced. This resolution was challenged by the teachers association by filing a writ petition in this court and the said resolution was stayed. The Government of Maharashtra thereafter issued Government Resolution No USG 1177/129387/XXXIII (Cell) dated 25.10.1977 in supersesion of Government Resolution dated 4.10.1975 and the new Government Resolution

provided that the college teachers recruited on or after 4.10.1975 will be required to obtain the post graduate qualification i.e. M.Phil within a period of 5 years from the date of the G.R. dated 25.10.1977 and if they are unable to do so they shall not be allowed to earn any further increment till they satisfy that condition. By a further Government Resolution dated 30.9.1982 bearing No. USG 1180/151651 (289)/UNI-4, the period for acquiring the M.Phil degree was increased to 8 years from 5 years. By Government Resolution No. USG/1180/151551/ (289)/UNI 4 dated 31.1.1983 the Government clarified that the period of 8 years ought to have been reckoned from the date of the said G.R.

6. By Government Resolution No NGC 1286/(1224)/UNI-4 dated 28.2.1989 the Government of Maharashtra revised the payscale of college teachers as per the recommendation of University Grant Commission as approved by the Government of India with effect from 1.1.1986. By this Government Resolution the State Government waived the requirement of compulsory acquiring of a M Phil in respect of teachers having obtained more than 55% marks at post graduate level. The decision to

waive the requirement of acquiring M.Phil degree was further clarified by a subsequent Government Resolution No. 1289/(1605)/UNI-4 dated 15.12.1989 and in para 1(i) it is laid down as under:

"Teachers appointed between 1.1.1986 and 27.2.1989 having more 55% marks in the relevant subject at post graduate level, but without M.Phil would be continued in those appointments, without insisting on acquiring M.Phil as that condition has now been waived".

7. Mr. Masand, learned counsel appearing for the petitioner contended that by Government Resolution dated 15.12.1989 the Government while waiving the condition of acquiring M.Phil qualification has discriminated between the teachers in that the teachers appointed between 1.1.1986 and 27.2.1989 having more 55% marks in relevant subject at post graduate level are granted benefit of waiver of post graduate degree in M.Phil whereas there was no such waiver as was granted in respect of those appointed prior to 1.1.1986. He contended that by the said G.R. dated 15.12.1989 the State Government has discriminated between the college

teachers who are otherwise similarly placed. According to him the benefit of waiver ought to have been given to teachers appointed prior to 1.1.1986 who have secured more than 55% marks.

8. We find considerable substance in the submission of Mr.Masand. The artificial division made by the Government Resolution dated 15.12.1989 stares in the face and is unrelated to any principle and whatever principle,if there be any, has absolutely no nexus to the objects sought to be achieved by the said Government Resolution dated 15.12.1989. The effect of this Government Resolution of 15.12.1989 is that whereas teachers with 55% and above marks in relevant subject who were recruited between 1.1.1986 and 27.2.1989 would not be required to acquire qualification in M.Phil, but those appointed prior to 1.1.1986 like the petitioner are required to obtain this qualification though both groups were similarly placed as on the date of the Government Resolution dated 27.2.1989. The equal treatment guaranteed under Art 14 is clearly violated inasmuch as the Government Resolutions accords differential and discriminatory treatment to equals in the matter of waiver of condition of passing M.Phil examination.

We do not see any justification for such unequal treatment meted out to the petitioner and others who are similarly placed. Therefore prayer of the petitioner for quashing and setting aside the action of the 2nd respondent is liable to be accepted. By an interim order dated 29.6.1992 the reliefs have been granted to the petitioner in terms of prayer clauses (g) and (h). We make the Rule absolute in terms of prayer clauses (d),(e) and (f).